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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/681,831

10/08/2003

Matt Kriesel

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EXAMINER

VO, HAI

ART UNIT

PAPER NUMBER

1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/681,831

**Applicant(s)**

KRIESEL, MATT

**Examiner**

Hai Vo

**Art Unit**

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7-11, 13-16, 19-21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-11, 13-16, 19-21 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1771

1. The art rejections are repeated.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 7, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Acker (US 5,066,259) in view of Hills (US 4,170,086). Acker discloses a doll structure comprising an envelope comprising a polymer gel substantially surrounding a fiber mat and a skin comprising a top layer and bottom layer as shown in figure 5. The skin is made from a resilient polymeric material (column 4, lines 50-52). The fiber mat has a density less than the polymer gel (claim 1, column 5, lines 17-20). Acker does not disclose a shock-absorbing envelope. However, the doll structure meets all the structural limitations as required by the claims. The envelope comprises a polymer gel surrounding a substrate, a top layer and bottom layer formed from a resilient polymeric material. The substrate has a density less than that of the polymer gel. Therefore, it is not seen that the doll structure would have performed differently than the reinforced polymeric pad of the present invention in terms of shock absorption. Acker does not specifically disclose the doll structure wherein the core 53 is made from a foamed polymeric material. Hills, however, teaches a stuffed animated toy wherein the stuffing material can be made from PVC

foam, mat of natural or synthetic fibers (column 6, lines 30-40). Therefore, Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute PVC foam for the synthetic fibers because PVC foam and synthetic fibers have been shown in the art to be recognized equivalent stuffing materials to provide bulk and form to the doll structure.

It has been held that a recitation with respect to the manner in which a claimed reinforced polymeric pad is intended to be employed does not differentiate the claimed reinforced polymeric pad from a prior art doll structure satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Mere recitation of "suitable for absorbing shock" impacts no definite structure to the claimed reinforced polymeric pad and is therefore found inadequate to convey structure in any patentable sense.

4. Claims 8, 11, 13-15, 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Acker (US 5,066,259) in view of Hills (US 4,170,086) as applied to claims 1 and 16 above, and further in view of Yates (US 6,027,674). Acker does not specifically disclose the doll structure wherein the polymer gel made from an epoxidized vegetable, a thermoplastic polymer and prepolymer. Yates, however, teaches a cushion material finding application in numerous toys comprising a gel/foam combination made from an epoxidized mineral oil and a blend of SEBS gel with other homopolymer which reads on Applicant's prepolymer. Yates discloses that varying the amount of the plasticized oil to impart the resilient properties of the cushion material is known in the art (column 2, lines 60-65). Therefore, it would

have been obvious to one having ordinary skill in the art at the time the invention was made to use the gel composition as taught by Yates motivated by the desire to provide the toys with excellent resiliency.

Yates does not specifically disclose an epoxidized vegetable oil. The examiner takes Official Notice that it is common and well known in the art to substitute the vegetable oil for the mineral oil because the two materials have been shown in the art to be recognized equivalent plasticizer oil for the gel composition.

Yates does not specifically disclose the amounts of thermoplastic polymer and prepolymer and plasticizer oil. Since the concentration is recognized as a result-effective variable, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical or provides unexpected results. Therefore, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the individual component of the gel composition having an amount in the range instantly claimed motivated by the desire to impart the resilient property of the material. This is in line with *In re Aller*, 105 USPQ 233 which holds discovering the optimum or workable ranges involves only routine skill in the art.

5. Claims 9, 10, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Acker (US 5,066,259) in view of Hills (US 4,170,086) and Yates (US 6,555,214), as applied to claims 8 and 16 above, further in view of Burgdorfer et al (US 4,456,642). Yates does not specifically disclose the use of the tin compound as

a catalyst. Burgdorfer, however, teaches a gel pad for use in wheelchair cushions wherein the gel composition comprises a tin compound as a catalyst (column 9, lines 10-15). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ tin compound as the catalyst of the gel composition motivated by the desire to promote the formation of the gel material.

### ***Response to Arguments***

6. The art rejections based on Acker and Hill have been maintained for the following reasons. Applicant argues that since both cited references are non-analogous, they can not be combined to render obvious the present invention. The examiner respectfully wishes to point out that Asker and Hill are ***both non-analogous to the claimed invention***; therefore, MPEP 2141.10 (a) does not apply. It is thus unnecessary for Hill to be reasonably pertinent to the particular problem with which the applicant was concerned as required by MPEP 2141.10 (a) (see discussion in the Office Action of 05/31/2006). Note that Asker and Hill are analogous to each other, namely both directed to a doll structure. It is not true that Asker and Hill must be in the field of application's endeavor to be properly combined to make out the 103 rejections. Since there is a motivation to combine the teachings of Asker and Hill to achieve the claimed invention and the combination of the references does suggest a reasonable expectation of success, Asker is properly combinable with Hill to establish a *prima facie* case of obviousness. Accordingly, the art rejections are sustained.

**Conclusion**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on Monday through Thursday, from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Hai Vo*

**HAIVO  
PRIMARY EXAMINER**